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# AC

Overview:

1. Presume aff because affirming’s harder. So far on this topic negs have won almost 4% more ballots out of a sample of around 1000.[[1]](#footnote-1) Prefer stats since there are an infinite number of analytic side bias arguments but stats represent the sum of all analytics and see how rounds are actually skewed. Force them to engage me on the empiric debate – when the neg reads multiple analytics for why negating is harder, they’re using their advantage to overwhelm the short aff rebuttals and are showing exactly why there exists a skew. Also means that all neg theory must be weighed against side bias because otherwise aff abuse is just fairly rectifying for the side bias. And, debaters may only read theoretical presumption arguments; they may not read substantive or textual presumption arguments because they force the burden of proof to one debater, skewing ground and giving that debater a more difficult burden to win. Ground is key to fairness and education since it’s the basis of making arguments.

2. If the resolution is permissible, then affirm, since proving statements permissible would prove that they’re not obligatory, which coheres with the “ought not” part of the resolution. The neg’s burden is to prove that speech ought to be restricted, which can only be proven in the case of an absolute obligation; absent such an absolute obligation, you’d have to affirm since you’re not obligated to do anything.

3. If I prove the neg can engage in the same practices they theoretically challenge, then that is sufficient to answer theory and prove no abuse: A. There are multiple legitimate interps of the topic and the aff goes into the round blind. I had to choose between mutually exclusive interps and the neg can always read theory and T so don’t punish me for having to set grounds B. Fairness is a relational concept since it dictates that what I’ve done you cannot, but if you have access to the same arguments, that proves that those practices are fair since you aren’t precluded from accessing them.

4. Accept aff definitions. A. there are multiple interps of the topic and the neg is reactive to the aff, so they can always be prepared to debate under it B. the neg can always call for alternate definitions, killing topic discussion because negs are incentivized to always layer the case debate with T and skews time because 1ARs are always forced to restart.

**The aff burden is to prove that the constitution is incoherent and cannot be interpreted, while the neg burden is to prove that the constitution is coherent and interpretable**. Meeting the condition of the burden substantively affirms the truth of the resolution – if the constitution is incoherent and un-interpretable, then it is impossible for public colleges and universities to restrict constitutionally protected speech since they cannot understand what it means for speech to be constitutionally protected. If protected speech is indeterminate, then it’s impossible to know if speech being restricted is actually protected. If public colleges *cannot* restrict constitutionally protected speech, then they ought not restrict it and the resolution is true. This conclusion logically follows from ought implies can because the contrapositive of ought implies can is that cannot implies ought not. Three reasons that ought implies can:

**First,** guiding action – unlike descriptive claims that speak to how agents act and how the world is, normative claims recommend good action. But, action is inevitable and some decision must be made. If an action can’t be done, then it can’t be compelled since that wouldn’t be guiding action anymore. **Second,** bindingness – double bind, either **a.** normativity isn’t binding, in which case we could just ignore it and there are no obligations, or **b.** it is binding and all our obligations must be possible because if they aren’t we cannot be bound to do them. **Third,** cruelty – imposing un-meetable requirements is cruel and destroys all value. If there is no way the individual in question can ever satisfy some demand, then the imposition of that demand compels them to forgo all other pursuits in favor of some obligation which will never even be fulfilled either way. Precludes any other framework because whatever value is posited by that framework, it cannot be achieved. And, these arguments don’t depend on truth-testing – we cannot compare worlds or advocacies if they’re literally inconceivable.

But, even if the burden doesn’t perfectly substantively affirm, prefer it theoretically: **1.** Reciprocity – my burden gives us each equal and opposite burdens, avoiding deflationary arguments like permissibility and what way they flow. Reciprocity key to fairness since it’s the definition of equal access to the ballot, which we need to have equal chances at winning. **2.** Real world – legal debate and interpretation of the constitution is key education **a.** 40% of debaters who think about their careers plan to be lawyers**[[2]](#footnote-2)** so it’s most applicable, the purpose of education is to prepare us for our lives after graduating **b.** precludes policymaking arguments since all government policies are enacted through legal avenues and understanding the law’s coherence is a key prerequisite to optimally working with the law. **3.** Debatability – moral philosophy is irresolvable **a.** moral principles require a justification, and a justification for the justification, and so on, so debates about morality are either unevaluable infinite logical regressions or just unweighable assertions of principles and **b.** moral claims have been argued for thousands of years so 45 minutes is unlikely to lead us anywhere. Debatability key to fairness because otherwise it’s unclear how we go about determining the better debater, and is by definition key to the unique education we get from in round clash.

And the neg must concede to the affirmative’s choice of burden structure for this round. A violation would entail contestation of the burden structure which includes reading a separate role of the ballot since that posits a separate mechanism for the judge to use. Prefer the interp **a.** other interps allow the NC to introduce an entirely new layer that the 1AR cannot establish adequate footing on due to the 13-7 time skew of a 1AR restart, means we can’t engage under their new paradigm anyways **b.** only my interpretation permits substantive discussion since when the burden structure is contested, every single round becomes a procedural debate about what burden is preferable but every burden structure or role of ballot says that substantive clash beneath it is educational **c.** switch side debate links turns reasons to prefer a neg role of the ballot – my interp forces debaters to debate under different paradigms of debate increasing clash and depth.

I contend the Constitution is incoherent and un-interpretable. Affirm:

1. Laws can always be applied in different ways and judges are subjective, possessing personal judgments about what to do, so application of law has no set answer. **Hasnas**:[[3]](#footnote-3)

The indeterminacy argument was originally developed by the legal realists4 as a critique of the legal formalism of the late nineteenth and early twentieth centuries.5 During this era of "classical legal consciousness,"6 **judicial decision-making was viewed as "a scientific**, deductive **process by which preexisting legal materials subsume** particularlegal **cases under their domain**, thus allowing judges to infer the antecedently existing right answer to the case at bar."7 This formalistic approach viewed the judge as one who objectively and impersonally decided cases by logically deducing the correct resolution from a definite and consistent body of legal rules.8 **Thus, the judge** did not make law, he or she **merely applied the law** that had been created by the legislature or was inherent in the common law.9 The realists introduced the indeterminacy argument to demonstrate that the application of the principles of deductive reasoning to the set of legal materials did not and could not uniquely determine the outcome of particular cases; that **judicial decisions were not "rationally deducible from a closed system of law."**10 The argument was based on two observations. The first was that the law is riddled with contradictory rules such that a judge will always have a choice between "competing rules leading to opposing outcomes."11 My initial hypothetical concerning the physician who does not respond to the call of a regular patient was designed to illustrate this observation. The second was that it is always possible for a judge to interpret the breadth of the rules and the facts of the case so as to generate conflicting results. This is because the rules are expressed in such vague language (e.g., `reasonable,' `due process,' `fair value,' etc.) as to allow them to be read as broadly or as narrowly as necessary to achieve any desired result,12 and because it is the judges themselves who characterize the facts of the case and decide which are relevant.13 My hypothetical involving the painting sold at auction was designed to illustrate this observation. The purpose of the indeterminacy argument was to demonstrate that the formalist image of the judge as one who does not make law, but impersonally discovers and applies an antecedently existing law, was a myth. It implied thatthe rules of law could not constrain judges' choices **since** it was the **judges** who **chose which rules to apply and how to apply them**. Further, since such choices were necessarily based on the judges' beliefs about what was right, it was the judges' **personal value judgments** that consciously or **unconsciously form**ed the basis of their **decisions.**

2. The Constitution is what the Supreme Court wants it to be – that’s literally the title of this Harvard Law review response. **Segall**:[[4]](#footnote-4)

Despite this difference between Judge Posner and Strauss, they do agree substantially on how the Supreme Court decides constitutional law cases. In his Foreward, Strauss persuasively details how **the Supreme Court follows a common law approach to constitutional decisionmaking in which the Justices rely primarily on the Court’s prior decisions** when deciing cases. He argues that constitutional **text is usually irrelevant** to constitutional outcomes, and he presents specific examples of decisions completely at odds with what appears to be unambiguous language. Strauss’s article eloquently supports Judge Posner’s antitextual remarks. But Strauss does not go quite far enough in his article and certainly not as far as Judge Posner. **Judge Posner explicitly argued that the text is irrelevant to Supreme Court Justices when they decide constitutional questions.** It is well past time that more academics openly embrace that position as well, and Strauss should be one of the first given his longstanding description of constitutional law as common law.

And ideology, shifting and changing, affects Supreme Court justices’ interpretation of the Constitution, making it indeterminate and incoherent as its own body. **Chemerinsky**:[[5]](#footnote-5)

I never have believed that **Bush v. Gore** reflected the fact that five justices wanted Bush as president and that four wanted Gore in that role. Rather, **I thought** that it **was** much more **about how** a person’s **political orientation and ideology determines** his or her **positions** and that this is generally no different **for justices** than for others in society. I remember thinking on December 8 that I expected that **the five most conservative Justices would** see the matter as other conservatives did and somehow **find a way to write an opinion favoring Bush** and ending the counting. That they did so in an opinion that makes little sense as a matter of constitutional doctrine further reinforced my sense that **the outcome was a reflection of the larger political forces and how they influence** the way in which people, including **justices**, see social issues.

3. There’s no such thing as plurality. The spaces between different things must be parts of the things themselves. Otherwise, if they were considered separate objects, then the spaces between those spaces would have to be considered separate things as well, and so on leading to infinite objects within a finite space which cannot be. So, spaces between objects are a part of the object and unify the objects and all objects into one blobject. This makes the Constitution incoherent since its dictates are laws that govern the interaction of distinct branches of government and how they rule over separate entities and states with people.

4. Applying rules is incoherent because rules do not have content since no rule is self-referential. Since the terms in the rule are not defined in the rule, rules do not have content since their meaning is always contestable. And any further rule to specify how to implement the rule is another rule, which is also infinitely mis-interpretable. For instance, if I point my finger at something, there’s nothing inherent to the gesture that means you should interpret it as meaning in the direction from wrist to fingertip and not fingertip to wrist. Because we have no way of knowing how to follow a rule we also cannot understand the content of the Constitution.

5. No experience can ever prove objective knowledge of the external world. **Searle**:[[6]](#footnote-6)

You could have the best possible evidence about other people’s behavior and still be mistaken about their mental states. You could have the best possible evidence about the past and still be mistaken about the future. You could have the best possible evidence about your own perceptual experiences and still be mistaken about the external world. This is so because you could be dreaming, having hallucinations, be a brain in a vat, or be deceieved systematically by an evil demon. Strange situations, yes, but it is impossible to disprove the potentiality for any of these scenarios.

We cannot have coherent interpretation of the Constitution if we cannot even objectively say it exists.

6. The law as determinate reinforces the hierarchy in which white males are dominant and ensures the survival of capitalism by defending against political and ideological challenges – as well as making the oppressed complicit within this system. **Hasnas 2**:[[7]](#footnote-7)

During the past two decades, the legal scholars identified with the Critical Legal Studies movement have gained a great deal of notoriety for their unrelenting attacks on traditional, "liberal" legal theory. The *modus operandi* of these scholars has been to select a specific area of the law and show that because the rules and principles that comprise it are logically incoherent, legal outcomes can always be manipulated by those in power to favor their interests at the expense of the politically "subordinated" classes. The Crits then argue that **the claim that the law consists of determinate**, just **rules which are impartially applied to all is a ruse employed by the powerful to cause** these **subordinated classes to view the oppressive legal rulings as** the **necessary** outcomes of an objective system of justice. This renders the oppressed more willing to accept their socially subordinated status. Thus, the Crits maintain that the concept of the **rule of law is** simply **a facade used to maintain the socially dominant position of white males in a**n oppressive and illegitimate **capitalist system.** In taking this approach, the Crits recognize that **the law is indeterminate, and thus**, that it necessarily **reflects the moral and political values of those empowered to render legal decisions.** Their objection is that those who currently wield this power subscribe to the wrong set of values. They wish to change the legal system from [is] one which embodies what they regard as the hierarchical, oppressive values of capitalism to one which embodies the more egalitarian, "democratic" values that they usually associate with socialism. The Crits accept that the law must be provided exclusively by the state, and hence, that it must impose one set of values on all members of society. Their contention is that the particular set of values currently being imposed is the wrong one. Although they have been subjected to much derision by mainstream legal theorists, [(33)](http://faculty.msb.edu/hasnasj/GTWebSite/MythWeb.htm#N_33_) as long as we continue to believe that the law must be a state monopoly, there really is nothing wrong, or even particularly unique, about the Crits' line of argument. There has always been a political struggle for control of the law, and as long as all must be governed by the same law, as long as one set of values must be imposed upon everyone, there always will be. It is true that the Crits want to impose "democratic" or socialistic values on everyone through the mechanism of the law. But this does not distinguish them from anyone else. Religious fundamentalists want to impose "Christian" values on all via the law. Liberal Democrats want the law to ensure that everyone acts so as to realize a "compassionate" society, while conservative Republicans want it to ensure the realization of "family values" or "civic virtue." Even libertarians insist that all should be governed by a law that enshrines respect for individual liberty as its preeminent value. The Crits may believe that the law should embody a different set of values than liberals, or conservatives, or libertarians, but this is the only thing that differentiates them from these other groups. Because the other groups have accepted the myth of the rule of law, they perceive what they are doing not as a struggle for political control, but as an attempt to depoliticize the law and return it to its proper form as the neutral embodiment of objective principles of justice. But the rule of law is a myth, and perception does not change reality. Although only the Crits may recognize it, all are engaged in a political struggle to impose their version of "the good" on the rest of society. And as long as the law remains the exclusive province of the state, this will always be the case.

## U/V - Theory

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1. Tabroom.com [↑](#footnote-ref-1)
2. “Gifted Tongues: High School Debate and Adolescent Culture” (2001)Gary Alan Fine.

   “Of those who had selected a career, a plurality (40 percent), planned to become lawyers.”

   Survey of over 400 students from 300 schools – 150 with people going to NFLs and 150 random not going to NFLs [↑](#footnote-ref-2)
3. John; Back to the Future: From Critical Legal Studies Forward to Legal Realism, Or How Not to Miss the Point of the Indeterminacy Argument, 45 Duke Law Journal 84-132 (1995)  [↑](#footnote-ref-3)
4. Eric J. Segall, Feb 10 2016 “The Constitution Means What the Supreme Court Says it Means” [↑](#footnote-ref-4)
5. E. Chemerinsky, 2012, “Political Ideology and Constitutional Decisionmaking: The Coming Example of the Affordable Care Act” Duke Law Journal [↑](#footnote-ref-5)
6. Searle, John R. Mind, Language, and Society: Philosophy in the Real World. New York: Basic Books; 2000. (27). [↑](#footnote-ref-6)
7. John; The Myth of the Rule of Law; Wisconsin Law Review. 1995. http://faculty.msb.edu/hasnasj/GTWebSite/MythWeb.htm [↑](#footnote-ref-7)